

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 11
HRW

10/11/00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Absopure Water Company

Serial No. 75/426,506

John P. Guenther of Rader, Fishman & Grauer PLLC
for Absopure Water Company.

Heather D. Thompson, Trademark Examining Attorney, Law
Office 103 (Michael A. Szoke, Managing Attorney).

Before Wendel, Bucher and Bottorff, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Absopure Water Company has filed an application to
register the mark HYDRATION CENTER for "retail beverage
vending services featuring mobile and stationary beverage
sampling booths."¹

Registration has been finally refused on the ground
that the mark is merely descriptive under Section 2(e)(1)
of the Trademark Act. The refusal has been appealed and

both applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

The Examining Attorney maintains that the proposed mark HYDRATION CENTER, when viewed in connection with applicant's "mobile and stationary beverage sampling booths," would clearly convey the information to consumers that applicant offers an establishment from which one can purchase water or other hydrating beverages. As support for her position the Examining Attorney has made of record dictionary definitions for the terms "hydration" and "center," an excerpt from applicant's web site showing applicant's use and definition of the term "hydration" and three Nexis excerpts showing use of the term "hydration center." The dictionary definitions being relied upon include the following:

hydration	to supply water to (a person, for example) in order to restore or maintain fluid balance;
center	a place where a particular activity or service is concentrated. ²

¹ Serial No. 75,426,506, filed January 30, 1998, based on an allegation of a bona fide intention to use the mark in commerce.

² Both of these definitions come from *The American Heritage Dictionary of the English Language* (3rd ed. 1992). We take judicial notice of a similar definition for "hydration" found in *Webster's Third New International Dictionary* (1993):

hydration	the act or process of combining with water; as a : the introduction of additional fluid into the body (~ sometimes helps to reduce the concentration of toxic substances in the tissues.)
-----------	--

The excerpt from applicant's web page consists of a discussion entitled "Facts about Water & Hydration," and includes the statement that "Replenishing the water your body needs is called HYDRATION." The Nexis excerpts include:

However, the Midtown site on 11th Street near the MARTA station will expand its services by creating a hydration and first aid center under a tent. Another coach will be parked near the Medical Center MARTA station. *The Atlanta Journal and Constitution* (May 21 1996);

...Vital Steps to Good Health," explains water's role in athletic performance. For a copy, write to the Evian Hydration Center, 353 Lexington Ave., New York... *Newsday* (September 9, 1989).

Applicant contends that its mark HYDRATION CENTER does not immediately convey a connection between the phrase and the services being offered by applicant. Looking at the terms individually, applicant argues that each term, "hydration" and "center," has multiple dictionary definitions and neither term "merely" describes retail beverage vending services.³ Even when combined, applicant insists that the mark HYDRATION CENTER is so broad that it is subject to numerous interpretations and does not

³ Applicant has offered, however, to disclaim the word CENTER, if that would overcome the refusal under Section 2(e)(1).

describe applicant's services with particularity. Instead, according to applicant, the mark could be used just as well in a suggestive manner for a wide variety of goods or services, such as a company providing irrigation services or pool equipment or services. Applicant contends that the minimal Nexis excerpts are of limited value and do not provide evidence of a common definition of the phrase in the industry or current use thereof. Applicant further points to its now incontestable registration for the mark THE HYDRATION DRINK for drinking water⁴ as evidence that the Office has previously determined that HYDRATION is suggestive when used in connection with applicant's goods.

A term or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic or feature of the goods or services with which it is being used. Whether or not a particular term is merely descriptive is not determined in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the designation is being used, and the significance

⁴ Applicant has attached to its brief a copy of its Registration No. 1,705,942 for the mark THE HYDRATION DRINK for "drinking water," issued August 4, 1992. A disclaimer is made of the term DRINK. The Examining Attorney has not objected to this evidence as untimely and thus we have taken it into consideration.

the designation is likely to have, because of the manner in which it is used, to the average purchaser as he encounters the goods or services bearing the designation. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

We find the evidence made of record by the Examining Attorney fully adequate to establish that the phrase HYDRATION CENTER, if used in connection with applicant's beverage vending services which are provided at mobile and stationary sampling booths, would immediately convey information to consumers as to the nature of these beverage sampling booths. As pointed out by the Examining Attorney, the question here is not whether the phrase might have equal applicability to other goods or services, but rather whether the phrase is merely descriptive as specifically applied to applicant's services. The phrase is not viewed in the abstract, but rather as used in connection with these particular services.

The dictionary definitions, as well as applicant's web page, demonstrate that "hydration" may readily be interpreted as indicating the replenishment of the body with fluids, particularly water. Certainly, when the term is encountered being used in connection with a beverage sampling booth, this would be the connotation to consumers.

While the term "hydration" may have other broad connotations, we are concerned only with its meaning or significance when used in the context of applicant's services. The additional term in applicant's mark, CENTER, aptly describes a location in general. Furthermore, although limited in number, we cannot disregard the Nexis excerpts which show use of the entire phrase "hydration center" in reference to beverage provision locations. Evidence of prior use of the phrase as a whole, or a dictionary definition of the phrase per se, is not even necessary, however, to support the present refusal. The issue is whether the phrase is merely descriptive when used in connection with applicant's services, not whether it is a generic designation which has been used by others for similar services.

Applicant's further argument that the Office has already determined that the term HYDRATION is or can be suggestive when used in connection with applicant's goods is not persuasive. In the first place, we do not have the file history for applicant's prior registration before us. Even more significantly, each application for registration must be considered on its own merits. See *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987). The present mark differs

from the registered mark and is to be used with services, not goods. The descriptive significance of the term HYDRATION in the mark HYDRATION CENTER as used in connection with beverage vending services obviously cannot be equated with the significance when the term is used in the mark THE HYDRATION DRINK for drinking water. The incontestability of applicant's prior registration and any estoppel effect of the determination by the Office of the non-descriptiveness of the term HYDRATION as used in the registered mark is limited to that mark and the goods of that registration. See *In re Dial A Mattress Operating Corp.*, 52 USPQ2d 1910, 1917 n.14 (TTAB 1999).

Applicant's additional argument that any doubt should be resolved in applicant's favor is equally unpersuasive. We are convinced that consumers, upon viewing the designation HYDRATION CENTER when used, as intended, in connection with applicant's beverage sampling booths, would immediately perceive the descriptive significance of the designation.

Ser No. 75/426,506

Decision: The refusal to register under Section
2(e)(1) is affirmed.

H. R. Wendel

D. E. Bucher

C. M. Bottorff

Administrative Trademark Judges,
Trademark Trial and Appeal Board

Ser No. 75/426,506